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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,500	10/24/2003	Peter W. Carhuff	88265-7670	1144

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WINSTON & STRAWN LLP
PATENT DEPARTMENT
1700 K STREET, N.W.
WASHINGTON, DC 20006

EXAMINER

MARKOFF, ALEXANDER

ART UNIT	PAPER NUMBER
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1711

NOTIFICATION DATE	DELIVERY MODE
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05/28/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/692,500	Applicant(s) CARHUFF ET AL.	
	Examiner Alexander Markoff	Art Unit 1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23, 29-31, 35-37, 42, 47, 48, 50-58, 60-62 and 67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23, 29-31, 35-37, 42, 47, 48, 50-58, 60-62 and 67 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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4. Claims 23, 29-31, 35-37, 42, 47, 48, 50-58, 60-62 and 67 rejected under 35 U.S.C. 103(a) as being unpatentable over Aoki et al (US Patent NO 4,860,550) in view any one of Barinas (US Patent NO 5,329,950) and Rolland (US Patent NO 6,564,698).

Aoki et al teach a method of operating, cleaning and sanitizing a food dispenser as claimed, except for recirculation the cleansing fluid back to the cleansing fluid supply. See entire document, especially Figures 1B, 2A, 8-11, 16, 25A, B, 26 A-D, 28, and related description and description at columns 1, 2, 6-13, and 19-23.

Aoki et al teach automatic washing and sterilizing of a dispenser as claimed, they teach the use of hot water with a temperature as claimed, they teach the use of the acid as claimed, they teach multiple application of hot water and the application time as claimed. Aoki et al teach the use of the source of the washing/cleaning fluid inside of the housing of the dispenser. They also teach dispensing of ice creams and servings for consumptions by individuals. Aoki et al also teach a controller with a CPU electrically connected to the parts of the dispenser and controlling the operation and functioning of the dispenser, including, dispensing, washing and sanitizing operations.

Barinas and Rolland teach that it was known to recirculate cleansing fluids through food dispensers.

It would have been obvious to an ordinary artisan at the time the invention was made to recirculate cleaning fluids in the method of Aoki et al in order to reduce the use of chemicals and supplies with reasonable expectation of adequate results since Barinas and Rolland teach such as known in the methods of cleaning food dispensers.

As to claims 60 and 61, which require a specific velocity of the flow of hot water:

First, it is noted that the claims do not specify any specific part of the flow path, wherein the velocity should be in the claimed range.

Second, the velocity of the cleaning fluid is a result effective variable. It would have been obvious to an ordinary artisan at the time the invention was made to find an optimum flow velocity of the cleaning liquid in the method of Aoki et al by routine experimentation in order to ensure proper cleaning sanitizing of the dispenser.

Response to Arguments

5. Applicant's arguments filed 2/11/10 have been fully considered but they are not persuasive.

The applicants allege that in Aoki the same tanks are used for storing flavors or cleaning solutions and that there is no rapid and easy switch between the different operations. The applicants further allege that Aoki either has a supply of food or a supply of cleaning fluid not both.

Whether or not the applicants are correct with their interpretation of the teaching of Aoki, the arguments are not persuasive because the claims not limited to exclude the use of the same tanks for cleaning fluid and food. The claims are not limited to require "rapid and easy switch". The claims are not limited to exclude removal of the syrups.

The claims require switching between the dispensing of the food and the conducting the cleaning and sanitizing operations at plurality of time intervals

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without having to connect an external source of cleaning fluid to the dispensing path each time cleaning is needed.

Such is disclosed by Aoki.

Further Aoki teaches internal source of the fluid (at least tank 47).

The applicants further allege that in Aoki the switch can not be automatic as required by claims 35 and 58.

The argument is not persuasive because the claims are not limited to the argued limitations.

Claim 35 requires a controller, delivery mechanism and a first mechanism configured to switch between the dispensing and the cleaning, wherein the controller is connected to the first mechanism for activating the first mechanism in response to predetermined conditions. Claim 58 recites switching upon request of an operator. The “predetermined conditions” in claim 35 are not specified and can be interpreted as in claim 58 as the request of an operator. The argued claims require conducting operations upon request of an operator; such is readable on the disclosure of Aoki because Aoki teaches automatic operation of the cleaning mechanism upon pushing a specific button by the operator,

The applicants further allege that Aoki does not utilize a mixing bowl. This is not persuasive.

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Aoki teaches a mix tank 5 and freezing cylinders 9, which are readable on the mixing bowl for preparing food, which is recited by the claims.

The applicants argue that the teaching of Barinas and Rolland do not remedy alleged deficiencies of Aoki.

The examiner disagrees.

First, as shown above, Aoki does not have the alleged deficiencies.

Second, Barinas and Rolland teach that it was known to recirculate cleansing fluids through food dispensers.

Thereby, it would have been obvious to an ordinary artisan at the time the invention was made to recirculate cleaning fluids in the method of Aoki et al in order to reduce the use of chemicals and supplies with reasonable expectation of adequate results since Barinas and Rolland teach such as known in the methods of cleaning food dispensers.

The applicants further allege that the examiner provided no evidence that it was conventional in the art to the cleaning supply in the dispenser.

This is not persuasive because Aoki teaches that it was known to provide a cleaning supply in the dispenser.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that

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any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no teaching, suggestion, or motivation to combine the references, the examiner recognizes that obviousness may be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992), and *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). In this case, the motivation is to reduce the use of chemicals and supplies found in the references themselves and in the knowledge generally available to one of ordinary skill in the art.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Markoff whose telephone number is 571-272-1304. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Alexander Markoff
Primary Examiner
Art Unit 1711

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